



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      ET FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an early end to the tenancy and an order of possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### **Preliminary Issue - Service**

This hearing was brought on an expedited basis. The Notice of Dispute Resolution Proceeding form was issued on July 29, 2021. The landlord testified he served the tenants personally with the Notice of Dispute Resolution Proceeding package and supporting documentary evidence on July 30, 2021. He submitted a Proof of Service form (#RTB – 9), witnessed by his wife, corroborating this service. His wife did not attend the hearing.

The tenants denied that the landlord served them with the documents on July 30, 2021. Rather, they testified he attended the rental unit on August 4, 2021 to serve them with the documents. Tenant MJ was adamant this was the date she was served, as she remembered that the landlord attended the rental unit the day of a medical procedure she had, and that this procedure occurred on August 4, 2021. Tenant RW agreed. The tenants stated that they did not have sufficient time to provide response documents as a result.

The landlord agreed that he attended the rental unit on August 4, 2021, but stated that on that date he provided the tenants with other documents, not related to this proceeding. He testified he had security camera footage and a text message exchange which would show that he served the documents as he claimed. The tenants stated that they had a document dated August 4, 2021 which would show that they were served on that date. I stood down the hearing for 10 minutes to allow the parties to upload their respective documents to the RTB's online evidence submission system. The tenants stated that they did not have their access code for this application, but did have one for

a different application, scheduled for September 20, 2021 (file number on cover of decision). I advised them that they could upload the document to that file, and I would be able to view it.

The tenants stated that they could not figure out how to upload their document. I noted that they had uploaded documents to the file via the portal before. MJ testified that her friend had helped her. She had not previously mentioned not being able to upload documents.

12 minutes later the landlord had uploaded:

- 1) an undated screenshot of a surveillance video of him standing outside the rental unit holding up two pieces (or bundles) of paper (I am unable to tell which); and
- 2) a text message exchange dated July 29 and 30, 2021 between tenant MJ and himself as follows:

[July 29, 2021]

Landlord: Hey [MJ]

I am coming tomorrow at 3:30 PM to your unit for general inspection period please be present there for the same.

MJ: You will have to come at 5:30 PM, please and thank you

Landlord: OK so let's keep it at 5:30 PM then.

[July 30, 2021]

Landlord: Hey [MJ]

As already discussed with you and your husband, please remove your trailer tomorrow evening so I can move my daughter's belongings.

After being read the landlord's text message exchange, the tenants stated that they now remembered that the landlord attended the rental unit that day to do an inspection, but that he did not serve them with any documents.

Respectfully, I find this hard to believe. Based on the evidence provided to me, I find that the landlord attended the rental unit on July 30, 2021. He was provided with the Notice of Dispute Resolution on July 29, 2021 and would have been instructed by the RTB staff to serve it within one day (as is RTB's practice). The landlord has provided a witnessed proof of service document. I find it more likely than not that he served the required documents on July 30, 2021 when he visited the rental unit.

I do not find the tenant's evidence to be compelling. Their testimony shifted as the landlord's evidence was presented. It was only after being confronted with evidence that they agreed to meet with him on July 29, 2021 that they testified that he had visited that day, but that he had not served them. I would have expected them to volunteer this

information much sooner, given the conflicting evidence regarding the date of service and the extended period of time that was spent trying to determine if the tenants had been served in accordance with the Rules of Procedure prior to standing down to allow the parties to upload evidence (roughly 30 minutes).

As such, I admit those documents the landlord served the tenants on July 30, 2021 into evidence.

The landlord also served a second package of documents on the landlord the day before the hearing. Rule of Procedure 10.2 and 10.3 require that that “all evidence” the landlord intends to rely on at an expedited hearing must be served on the tenants within one day of receiving the Notice of Dispute Resolution Proceeding Package from the RTB (which the landlord received on July 29, 2021). Accordingly, any evidence served after July 30, 2021 was served outside the permitted time frame. As such, I exclude the document served the day before the hearing from evidence.

The tenants did not submit any documentary evidence in response to the landlord’s application.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee;

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

The parties entered into a written tenancy agreement starting January 1, 2021. Monthly rent is \$1,200 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$600 and a pet damage deposit of \$600. The landlord still retains these deposits.

The rental unit is a basement suite located in a duplex (according to the landlord) or a triplex (according to the tenants). In any event, the landlord lives in one unit on the residential property which shares a common wall with the basement unit occupied by the tenants and an upper unit rented out to another individual. The landlord testified that his wife is disabled and needs to access their unit by walking around the rear of the residential property, across a large, shared concrete patio onto which the tenant’s basement unit opens up (the “**Patio**”) and up a ramp leading to the landlord’s unit’s elevated deck.

On his application for dispute resolution, the landlord set out the following grounds for seeking an order for an early end to the tenancy:

- 1) Tenant RW assaulted the landlord's wife.
- 2) The tenants, in a conspiracy with the occupant of the upper unit, switched off the motion sensor lights on the side and back of the house, making it difficult for the landlord's wife to navigate her way to the rear ramp to gain access to the landlord's unit.
- 3) The tenants permitted the occupant of the upper unit to place a glass table on the Patio, which the landlord's wife walked into (being unable to see it due to the motion sensor lights being deactivated by the tenants), injuring herself.

In his evidence package, the landlord also included evidence relating to the tenants blocking access to the laundry facilities, illegally parking, and smoking in the rental unit. I advised the landlord that this evidence does speak to the bases for an early end to tenancy that he specified on the application, and that, even if it did, such breaches would likely not rise to the level of seriousness that warrants an early end to tenancy.

I asked the landlord if he would be willing to adjourn this hearing to be heard with the tenants' application (which deals with the cancellation of a notice to end tenancy for cause, among other things). He stated that, due to the severity of the tenants' actions, he wanted this matter concluded today. Accordingly, I advised him to restrict his submissions to the issues of the assault, the sensor lights, and the glass table, in order to ensure that the application could be adjudicated in a single hearing. I note that this hearing was scheduled for one hour, the first 45 minutes of which were consumed with the issue of service (see above). I extended the hearing by 35 minutes, which allowed both sides to make full submissions on the issues. After I made my ruling on the admissibility of the landlord's evidence, neither party raised any issues regarding extending the hearing past the allotted time or stated that they required more time to make submissions.

#### 1. Assault

The landlord testified that, at the start of the tenancy, he was in a foreign country and that his wife was living in their unit on the residential property alone. He testified that he did not return to British Columbia until mid-March 2021 and was then quarantined (due to COVID-19 requirements) for a further 14 days.

He testified that when he was out of the country, RW fought with his wife constantly regarding the condition of the Patio. He testified that underneath the ramp there is a storage area that is for the exclusive use of the landlords. He testified that it is enclosed, but that the tenants kept removing the access door. They placed their belongings and garbage in front of the door and in front of another door located nearby which led to laundry facilities. He testified that the tenants caused the Patio to become messy. His wife, on March 21, 2021, confronted the RW about this, and he testified RW kicked a lawn mover that was located between them, and that the mower then hit the landlord's

wife's ankle, cutting it. The landlord testified her ankle was bleeding, but that she did not suffer any long-term injuries. He submitted a photo of the cut into evidence to corroborate his testimony. The landlord's wife did not attend the hearing or provide any written statement of her own.

RW denied assaulting the landlord's wife. He testified that, while the landlord was out of the country, the landlord asked him in an email to move some items from in front of the laundry door so that a contractor could access it. RW obliged. He testified that the landlord's wife then came down "screaming" at him and threw these items all over the Patio. He testified that the door to the storage area under the ramp was not attached to anything and merely propped up against part of the door frame. He testified he would take it down and lay it on the ground because he was afraid it would fall over and hit him, his wife, or their dog. He testified that the landlord's wife would repeatedly confront him about this but did not fix the problem by securing the door.

RW testified that the landlord's wife, on more than one occasion, removed the tenant's belongings from the Patio. He testified that, on one occasion, she tried to shove a lawn mower into the rental unit while he was standing in the doorway. He testified that he blocked it before it could hit him and pushed it back at her. He denied that the lawn mower made any contact with the landlord's wife. He denied that he caused any injury to the landlord's wife or that he assaulted her in any way.

## 2. Motion Sensors and Glass Table

The landlord testified that he recently had motion activated lights installed along the side and rear of the house so that his wife could see where she is walking when it is dark out. He testified that tenants deactivated these lights by flipping a light switch inside the rental unit which he had specifically instructed them not to flip. He testified that on the evening of June 20, 2021, after coming home from a Father's Day dinner, his wife walked around back of the house so as to access the ramp leading up to her unit. He testified she could not see very well and, as a result of the lights not working, she walked directly into a glass table (more on this shortly) and seriously injured herself. He submitted the following documents showing the severity of the injury:

- 1) A medical note recommending that she avoid walking on uneven surfaces for mobility and medical reasons between June 30 and July 30, 2021
- 2) A note from a hospital emergency room excusing her from work for June 20 to June 24, 2021.
- 3) A prescription for a pain killer dated June 21, 2021.

The tenants admitted to turning off the switch for the motion sensors. However, they testified they did so on the advice of an electrician. They testified the unit above them had recently flooded and water leaked into the rental unit (which the landlord confirmed). They testified it reached the switch controlling the motion sensor and the electrician (who is their neighbour and who also installed the motion sensors for the

landlord) was worried the water might have damaged the switch controlling the sensors would then pose a danger to the tenants.

The landlord testified that the tenants never advised him of water in or near the switches. He denied that this would be the case, as the light switches controlling the interior living room lights for the rental unit were located right next to the switches controlling the motion sensors.

### 3. Glass Table

The parties agree that a large glass table belonging to the upper unit occupant is located on the Patio. The landlord stated that the tenants allowed the upper occupant to move it there without his permission, and that the tenant act like the Patio is their own private area. The tenants testified that the Patio is a common area and they are entitled to place items on it for their use.

The tenant denied that the table was placed in a way that obstructed the pathway from the side of the house to the ramp to the upper unit. The landlord submitted a photo showing the layout of the patio, capture the ramp, the table, and the walkway along the side of the house used by his wife. The photo clearly shows that the glass table is placed several feet to the right of the ramp (as you would face it) and several feet back from the bottom of the ramp. Anyone walking along the side of the house towards the ramp would walk past the table before reaching the bottom of the ramp. However, as the table is set back from the bottom of the ramp, no reasonable route from the side of the house to the ramp would come within touching distance of the glass table.

### Analysis

The landlords seek to end the tenancy pursuant to section 56(2) of the Act, which states:

#### **Application for order ending tenancy early**

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that

- (A) has caused or is likely to cause damage to the landlord's property,
- (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the residential property, and
- (b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

So, the landlord bears the evidentiary burden to prove the facts required to satisfy the requirements in section 56 of the Act are met.

Policy Guideline 51 discusses applications for an early end to a tenancy. It states:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

## 1. Glass Table

Based on the evidence presented at the hearing, I cannot find, even if the tenants allowing the upper unit occupant to place the glass table on the Patio is a breach of the tenancy agreement, that such a breach would rise to the level of “serious” or that it would be unfair to the landlord or other occupants of the residential property (which include his wife) to require that they wait to end the tenancy pursuant to section 47 of the Act. The glass table is located such that it does not impede the pathway between the side of the house and the ramp. The injuries the landlord’s wife allegedly suffered were not caused by the placement of the table, but by the lack of lighting on the Patio.

As such, I decline to order the tenancy be ended early on this basis.

## 2. Motion Sensors

The lack of lighting along the side of the house and on the Patio poses a more immediate concern, as this pathway is regularly used by the landlord’s wife to access her unit. I accept that, due to her disability, she must use the ramp and cannot enter through the front of the house.

However, I am unsure if the tenants’ turning off the motion sensors amounts to having “seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant” in light of the fact that the upper unit recently flooded and leaked water into the rental unit. I have no documentary evidence, for either side, relating to the extent of the flood damage. It is the landlord’s responsibility to prove that the conditions of section 56(2) have been met.

In this case, while the tenant’s may have turned off the lights, the landlord or the upper tenant may also be reasonably seen to bear responsibility for causing the circumstances which required the tenants to do so (by failing to adequately remediate the flood damage or by causing the flood respectively). I have no evidence as to what steps the landlord took to repair the damage to the rental unit caused by the flood. Section 32 of the Act creates a positive obligation on the landlord to repair and maintain the rental unit. I cannot say if the landlord met this obligation following the flood.

As such, I find the landlord has failed to discharge his evidentiary burden to prove it is more likely than not that the tenants seriously jeopardized the safety or health of the landlord’s wife. Accordingly, I decline to end the tenancy on this basis.

However, as this issue may be ongoing, pursuant to section 29(1)(d) and 62(3) of the Act, I order that the landlord, his agent, or contractor may enter the rental unit after giving the tenants 24 hours written notice, for the purposes to inspecting the motion sensor switches, documenting their condition, and making repairs. I note that the tenants need only be notified of the date of this entry; they are not entitled to be present when the landlord enters (as per section 29 of the Act). The parties may arrange a time for the landlord to attend while the tenants are present, but this is not a requirement. Additionally, I order that the tenants to make all reasonable accommodations for the



landlord to affect any repairs of the motion sensor switches, and not to turn these switches off, once they are repaired.

### 3. Assault

As set out at Policy Guideline 51, the landlord must provide sufficient evidence to prove the tenants committed a serious breach of the Act. It suggests a “witness statement describing the violent acts committed by the tenant” as one such piece of evidence. The landlord has not tendered any such evidence.

The only evidence provided in support of his allegation of assault is his own testimony, which was acquired second-hand from his wife, and a photograph of his wife’s ankle with a cut on it. I do not find that this is sufficient evidence to discharge the landlord’s evidentiary burden. I would have expected his wife to attend the hearing, or to have provided a written statement setting out what occurred. I understand that the landlord’s wife has a language barrier, but I see no reason why she would not have been able to provide a written statement in her native language and have it be accompanied by a translation, or why she could not have attended the hearing and had the landlord act as a translator.

The landlord’s evidence as to what occurred is hearsay, his wife’s evidence being filtered down to me through the landlord. I do not find such evidence to be especially reliable, in the absence of other corroborating evidence.

RW’s testimony was clear. He did not deny having confrontations with the landlord’s wife or that an altercation occurred between them. I accept his testimony that she pushed a lawn mower towards him, and that he pushed it back towards her. This may be the exact event the landlord’s wife described to the landlord. RW testified that the lawn mower did not make contact with the landlord’s wife after he pushed it back at her. Of this I am less certain. In the heat of an argument when people are acting aggressively towards each other (as was described by RW) accidents contact can occur. I make no finding as to whether such contact did occur, but, even if it did, based on RW’s testimony, I find that it would have been unintentional. Such a finding would be consistent with what the landlord implicitly saw (her cut ankle) when his wife returned to their unit after the altercation with RW.

Additionally, the injury suffered by the landlord’s wife, on the landlord’s own testimony, was not significant. The photo of her ankle shows only a small cut. I also note that I have no way of telling when the photo was taken. It may be that it depicts an injury suffered as a result of some other action, not related to the tenants. I cannot be reasonably certain if the injury depicted in the photo was incurred on or shortly after the date the landlord alleges RW assaulted his wife.

I do not find that the landlord has discharged his evidentiary burden to show that the tenants significantly interfered with or unreasonably disturbed him or his wife or serious

jeopardized either of their health or safety. Without direct evidence from his wife, and with little documentary evidence, I only have RW's first-hand testimony as reliable evidence on which to base my decision.

I find that the landlord has failed to show that RW assaulted his wife as alleged in order to satisfy the conditions of section 56 of the Act.

#### 4. Filing Fee

As the landlord has been unsuccessful in his application, I decline to order that the tenants repay the filing fee to the landlord.

#### **Conclusion**

I dismiss the landlord's application, in its entirety, without leave to reapply.

I order that the landlord may enter the rental unit in accordance with the requirements set out above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 13, 2021

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Residential Tenancy Branch